

The Fiqh of Marriage in the Light of the Quran and Sunnah

**Covering the Dower, Wedding Night,
Wedding Feast and Rights of the Husband
and Wife**

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Translator's Introduction

In the name of Allah, Most Compassionate, Most Merciful

All praises are due to Allah; we praise Him; we seek His help; we seek His forgiveness; and we seek His guidance. We seek refuge in Allah from the evil in our souls and the badness of our deeds. For whomever Allah guides, there is none to lead him astray. And for whomever He allows to go astray, there is none to guide him. I bear witness that there is none worthy of worship except Allah, for whom there is no partner. And I bear witness that Muhammad is His servant and Messenger.

The vast majority of Muslims will get married at one time or another in their lives, if they have not already done so. Marriage is definitely one of the most important events that takes place in one's private life. However, like all other aspects of one's life, one must be careful to follow the proper steps when it comes to marriage. One must be guided by the laws of Allah when it comes to the marriage proposal, seeing the prospective bride, the marriage contract, the marriage ceremony, the dower and so forth. Too many times these issues are ruled not by Islamic law but by the prevalent customs of the people. The customs have become the standard to such an extent that many people are not aware that some of those customs are in contradiction with what the Quran and sunnah have laid down as guidance for mankind. The situation has sometimes deteriorated to the point that when people are told of the true teachings of Islam concerning marriage, they reject it as something foreign and alien to what they have come to know as "Islam."

It is imperative that all Muslims return to the Quran, sunnah and Islamic fiqh to guide them in matters related to marriage. Every aspect of a person's life should be guided by the revelation and guidance that has come from Allah. This is true for everything from the way the government runs to how a person treats his or her own spouse. No action

Chapter One

The Dower and Related Fiqh Issues

The Types of Rights of the Wife Upon Her Husband

The wife has specific rights upon her husband that are the result of a sound marriage contract. Some of the rights are material rights while others are non-material.¹

From the material rights of the woman is the dower (*al-sadaaq* (الصداق)). It is also called “*al-mahr* (المهر the dower), *al-nihlah* (النحلة the gift), *al-fareedhah* (الفريضة the obligation), *al-hibaa* (الحباء the gift), *al-ajr* (الأجر the compensation), *al-iqr* (العقر the payment), *al-alaaq* (العلائق the bond), *al-sadaqah* (الصدقة the charity), *al-taul* (الطول bounty or gift), *al-kharas* (الخرس feast), and *al-nikaah* (النكاح marriage).”²

The reason it is called *al-sadaaq* “is because one feels the husband’s sincerity in wanting to marry that woman.”³ In the laws before us, the guardians would receive the dower.”⁴

The Lexical Meaning of *al-Sadaaq* (the dower)

The *sadaaq*— it is better known as *sadaaq* than *sidaaq*— is an exchange. It is said that it is an honoring for the wife. The plural is

¹ These shall be discussed, by the help of Allah, in the discussion of spousal rights.

² *Haashiyataa Qalyoobi wa Umairah ala Sharh Minhaaj al-Taalibeen*, vol. 10, p. 275.

³ [The words *al-sadaaq* (dower) and *sidq* (sincerity) came from the same three letter stem. That is why the author stated the above.—JZ]

⁴ *Subul al-Salaam*, vol. 3, p. 311.

"*asdiqah* for small plurals (from three in number to ten) and *suduq* for larger numbers."¹

What Requires the Giving of the Dower

The term *sadaaq* or *mahr* applies to everything that is required to be paid due to a [marriage] contract, sexual intercourse, or in the case of forced separation, such as due to having the same breastfeeding mother or the witnesses taking back their statements.

Technical Definition of Dower

As a technical, legal term, the dower is defined as, "something given in exchange for marriage or something similar, be it required by the judge or by agreement among the two parties."

The Wisdom behind Instituting the Dower

Islam has legislated the giving of the dower by the husband to the wife in order to make the woman's heart pleased and to honor her. It is also meant to bring an end to what was done in the Days of Ignorance wherein she was wronged, exploited, despised and robbed of her wealth. The dower is a right exclusively for the wife. It is her possession and none of her guardians or relatives share any part of it. No one has any power over her concerning how she wishes to dispose of it, as long as she does so in a legally acceptable manner. She may give it away as a gift, she may lend it to others or she may give it in charity or do any other permissible acts she wishes with it.

The dower was instituted because the goal of marriage is not the actual act [of the marriage contract in] itself. In fact, the actual purpose of marriage cannot be achieved unless the spouses stay in a state of marriage. However, that may not be achieved unless the dower is an

¹ *Al-Raudh al-Muraba Sharh Zaad al-Mustaqni bi-Haashiyah ibn Qaasim*, vol. 6, p. 363.

obligation at the time of the marriage contract itself. In this case, when there come times that may lead the man to divorce his wife, such as estrangement or coarse behavior, the husband would not be willing to divorce his wife due to just the slightest act of rudeness that occurs. If it were not for the dower that was required due to the contract itself, it would be very easy for him to leave her. Therefore, the goals of marriage would not be met as the goals and benefits of marriage are only met when the two are in accord and agreement with one another but that accord will not come about unless the woman is something honored and special to the husband. But such honor will not come about unless he had to give up something important to him. This is because what is most difficult to achieve is most special to the person while what is easy to achieve becomes something insignificant to the person. Therefore, if the wife is not something special in the eyes of the husband, then he will dispose of her at the first sign of unhappiness, the accord will not occur and the purposes of marriage will not be achieved.

What we see happening in some European countries—in fact, in some Muslim countries—is very strange indeed. This is where the woman is required to furnish a dowry or provide the furniture for their future house. This is definitely turning the natural order of things upside down and goes against the nature of mankind. It leads to a great deal of social ills and behavioral harm. It is a means by which the woman is despised and belittled. Indeed, she is ruined because of it. If the woman is not able to gather enough wealth together for marriage, she will not be able to get married and, instead, will have boyfriends and affairs and other evil results.

Such a practice contains a great deal of evil and harm for the society; this practice may even bring about society's end soon. There is a great difference between the case where the woman feels that she and what she possesses belong to her husband and where she feels that she is something desired and honored, as the fiancé spends money on her and gives her presents and so on to get her as his wife.

All praises are due to Allah who raised the position of the woman while other laws and systems belittle her and degrade her honor.

The Ruling Concerning Stating the Dower at the Time of the Marriage Contract

It is a sunnah (recommended act) to state the dower at the time of the marriage contract in order to prevent any future dispute or argumentation. This is based on Allah's statement,

وَأَحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ

"All others [women other than those stated in the verse] are lawful for you provided you seek them [with a dower] from your wealth" (*al-Nisaa* 24). And the Messenger of Allah (peace be upon him) said to the one who was to marry the woman who had offered herself to the Messenger of Allah (peace be upon him),

الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ

"Seek something [to give her as a dower] even if it be a ring made of iron."¹

The scholars are agreed that it is sanctioned to state the dower at that time but it is not a prerequisite for the validity of the contract.²

The Status of the Dower

The dower is not a prerequisite or an essential component of the marriage contract. Instead, it is one of its rulings and a requirement of a sound marriage. Therefore, a small amount of uncertainty concerning it is overlooked as well as a small amount of potential harm that is expected to be removed. This is because the goal of marriage is bringing

¹ Recorded by al-Bukhari in his *Sabih*, number 5078, The Book on Marriage, Chapter on marrying those in dire straits, and numbers 5029, 5030 and 5141. Recorded by Muslim (#1425), The Book on Marriage, Chapter on the dower.

² *Haashiyah al-Raudh al-Murabi bi-Sharh Zaad al-Mustaqni*, vol. 6, p. 364; *al-Ifsaah an Maani al-Sibaah* by ibn Hubairah, vol. 2, p. 135.

the two together and having the two enjoy each other. If the marriage contract is concluded without the mentioning of a specific dower, the marriage contract is still valid. In that case, the husband is required to give his wife a dower which is comparable to the dower that women who are similar to his wife receive, according to the agreement of the scholars.¹

The evidence for this position is in Allah's statement,

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً

"There is no sin upon you if you divorce women while you had not yet had sexual relations with them, nor appointed for them a dower" (*al-Baqara* 236). This verse permits divorce before consummation and before determining the dower. This indicates that the dower is neither a necessary component nor a prerequisite for the marriage contract.

In *Zaad al-Maseer*, ibn al-Jauzi stated, "The verse indicates that it is allowed to have a marriage contract without stating the dower."²

It is confirmed in the sunnah from Uqbah ibn Aamir who narrated that the Messenger of Allah (peace be upon him) said to a man, "Would you be pleased if I were to marry you to so and so?" He said, "Yes." Then he said to the woman, "Would you be pleased if I were to marry you to so and so?" She said, "Yes." So he married the two of them together. Uqbah consummated the marriage and did not establish any dower for her. When he was about to die, he said, "The Messenger of Allah (peace be upon him) married me to so and so and he did not state a dower for her and I did not give her anything. Therefore, I give her as the dower my share [of the war booty] in Khaibar." She took it and sold it for two hundred thousand [dinars].³

¹ *Kasbaaf al-Qinaa*, vol. 5, p. 144; *al-Badaai*, vol. 2, p. 274; *al-Mubadhib*, vol. 2, pp. 55 and 60; *al-Sharh al-Sagheer*, vol. 2, p. 449; and *al-Fiqh al-Islami wa Adillatuhu* by Wahba al-Zuhaili, vol. 7, pp. 23 and 254.

² *Zaad al-Maseer*, vol. 1, p. 279.

³ Recorded by Abu Dawood (#2117), The Book on Marriage, Chapter on one who marries and did not determine a dower until he dies. Its chain is *hasan*. Al-Haakim